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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

7
8 JOSHUA BLAND,

9 Plaintiff,

10 v.

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, *et al.*,

13 Defendants.

Case No. 1:20-cv-00637-NONE-BAM (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

14 Plaintiff Joshua Bland ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights
15 action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's motion to proceed
16 *in forma pauperis*, filed May 5, 2020. (ECF No. 2.)

17 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a
18 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
19 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
20 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
21 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
22 physical injury."¹

23 The Court has reviewed Plaintiff's complaint and finds that his allegations do not satisfy
24 the imminent danger exception to section 1915(g).² Andrews v. Cervantes, 493 F.3d 1047,

25 ¹ The Court takes judicial notice of the following United States District Court Cases: (1) Bland v. Cal. Dep't of Corrs.
26 & Rehab., Case No. 1:18-cv-01357-LJO-EPG (E.D. Cal.) (dismissed May 2, 2019, for failure to state a claim);
27 (2) Bland v. Brown, Case No. 1:18-cv-01358-AWI-JDP (E.D. Cal.) (dismissed July 11, 2019, for failure to state a
28 claim); and (3) Bland v. Clark, Case No. 1:19-cv-00197-DAD-BAM (E.D. Cal.) (dismissed April 17, 2020, for
failure to state a claim).

² The Court expresses no opinion on the merits of Plaintiff's claims.

1 1053–55 (9th Cir. 2007). Plaintiff raises claims regarding “constitutional impermissible
2 application of statutes,” alleging that the State of California and the Superior Court of California
3 for Fresno County violated Plaintiff’s rights under the Fourteenth Amendment. Plaintiff
4 challenges certain state statutes under which he is convicted, and seeks damages and punitive
5 damages. (ECF No. 1.) However, Plaintiff does not allege that he was under any imminent
6 danger of serious physical injury at the time the complaint was filed. Therefore, Plaintiff has not
7 satisfied the exception from the three strikes bar under 28 U.S.C. § 1915(g), and Plaintiff must
8 pay the \$400.00 filing fee if he wishes to litigate this action.

9 Accordingly, it is HEREBY RECOMMENDED that:

- 10 1. The motion to proceed *in forma pauperis* (ECF No. 2) be DENIED, pursuant to 28
11 U.S.C. § 1915(g); and
- 12 2. Plaintiff be ORDERED to pay the \$400 initial filing fee in full to proceed with this
13 action.

14 These Findings and Recommendations will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
16 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
17 file written objections with the court. The document should be captioned “Objections to
18 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file
19 objections within the specified time may result in the waiver of the “right to challenge the
20 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
21 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
22 IT IS SO ORDERED.

23 Dated: May 8, 2020

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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